

AMENDING THE ACT OF JUNE 21, 1940, RELATING TO THE ALTERATION OF CERTAIN BRIDGES OVER NAVIGABLE WATERS, SO AS TO INCLUDE HIGHWAY BRIDGES

JULY 3 (legislative day, JUNE 27). 1952.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Public Works, submitted the
following

REPORT

[To accompany H. R. 8127]

The Committee on Public Works, to whom was referred the bill (H. R. 8127) to amend the act of June 21, 1940, relating to the alteration of certain bridges over navigable waters, so as to include highway bridges, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The act of June 21, 1940, which this bill amends, known as the Truman-Hobbs Bridge Act, and passed over a Presidential veto, provides that the United States shall bear a portion of the cost of alterations of bridges, used and operated for the purpose of carrying railroad traffic or both railroad and highway traffic, when such alterations are determined by the Secretary of the Army to be necessary in the interest of navigation.

Under the provisions of the 1940 Act, whenever alteration to a bridge carrying railroad traffic over a navigable waterway is ordered by the Secretary of the Army, to remove obstructions to navigation, the railroad company bears only that portion of the cost which represents betterments or improvements of its property, and the Federal Government bears the remaining cost. When such bridge is used jointly by a railroad and a public highway, the cost attributable to the requirements of highway traffic must be borne entirely by the public agency having jurisdiction over the highway, with the remaining cost apportioned between the railroad company and the Federal Government. No provision whatever is made for any Federal participation in the cost of alterations required of bridges carrying highway traffic only.

The purpose of this bill is to amend the Truman-Hobbs Act to provide for Federal contribution to the cost of alterations to bridges carrying highway traffic, if such bridge is owned or jointly owned by a State, county, municipality, or other political subdivision, when ordered by the Secretary of the Army, in the same manner as it now applies to bridges carrying railroad traffic. It would remove the existing discrimination between alteration of railroad and highway bridges for the benefit of general navigation.

The matter of alteration to bridges unreasonably obstructing navigation has been the subject of legislation for many years. The first general legislation on this subject was approved in 1888 and authorized the Secretary of the Army to order the alteration of bridges obstructing navigation. That act was later amended and reenacted, and action thereunder was upheld by the Supreme Court. For many years, permission for construction and operation of all bridges over navigable waters was granted, subject to the provision that alterations necessitated in the interest of navigation would be made by the bridge owner without cost to the United States. The act of June 21, 1940, relieved the railroads of their obligation, and in so doing discriminated against the public highways.

The committee is of the opinion that railroads and highways should receive equal treatment in the matter of bearing the cost of alterations necessary to remove obstructions to navigation. It is the understanding of the committee, however, that the provisions of this bill will be applicable only to those cases initiated by the Corps of Engineers for alteration of railroad, highway, or combination railroad-highway bridges, to meet the needs of navigation only. Alteration of bridges of this type necessary to meet the applicable railroad or highway traffic needs will not be covered by this law, and no part of the alteration or modification will be paid with Federal funds authorized by this act.

The committee has been informed that 10 bridges have been ordered altered under the provisions of the Truman-Hobbs Act. The final apportionment of cost for six cases resulted in the proportionate Federal share varying from 61.5 percent to 90.3 percent, the average being 76.2 percent, and the total cost to the Government having been \$5,000,000. The estimated Federal cost of altering the other four bridges is about \$7,500,000. The estimated cost of altering obstructive highway bridges owned by States and other public agencies would at least equal the cost of altering railroad bridges under existing law.

Letters from the Secretary of the Army and the Secretary of Commerce pertaining to this legislation are as follows:

THE SECRETARY OF COMMERCE,
Washington, June 2, 1952.

Hon. CHARLES A. BUCKLEY,
Chairman, Committee on Public Works,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This letter is in further reply to your communication of June 8, 1951, requesting the comments of the Department concerning H. R. 3764, a bill to amend the act of June 21, 1940, relating to the alteration of certain bridges over navigable waters, so as to include highway bridges, and for other purposes.

The act presently provides that the United States shall bear a portion of the cost of alterations of bridges, used and operated for the purpose of carrying railroad traffic or both railroad and highway traffic, when such alterations are found to be

necessary by the Secretary of the Army to render navigation reasonably free and unobstructed. It provides that, except for direct and special benefits which will accrue to the bridge owner as a result of such alterations and which shall be assumed by the bridge owner, the United States shall bear the whole cost of such alterations to railroad bridges and that part of the cost of alterations to combination railroad and highway bridges that is attributable to the requirements of railroad traffic, but that the proprietor of the highway shall bear that part of the cost of alterations to combination railroad and highway bridges that is attributable to the requirements of highway traffic. Said act of June 21, 1940, applies only to railroad bridges or to the railroad portion of bridges used for both highway and railroad traffic, but it does not apply to bridges devoted solely to highway traffic.

The pending bill would amend the act of June 21, 1940, so that its provisions would apply to any bridge carrying highway traffic, if such bridge is owned or jointly owned by a State, county, municipality, or other political subdivision, in the same manner as it now applies to any bridge carrying railroad traffic. In other words, the bill is designed to erase the distinction under the existing law under which public highway authorities are denied the same relief now afforded railroads where bridge alterations are required in the interests of navigation.

Prior to the act of June 21, 1940, under a precedent long established by early river and harbor legislation, permission by Congress for construction and operation of any bridge over navigable waters, whether the bridge carried railroad or highway traffic or both, was granted upon the condition that the United States shall not bear any portion of the cost of any alterations as may be later required to remove unreasonable obstructions to navigation, and the bridge owner was fully apprised of such condition before construction of the bridge was undertaken. The act of June 21, 1940, therefore, relieved the railroads of an obligation which they theretofore had in common with public highway authorities, and in so doing it has discriminated in favor of the railroads and against highways. It is believed that public highway authorities and the railroads should have an equal responsibility and should receive equal treatment in the matter of bearing the cost of alterations needed to remove obstructions to navigation.

The attention of this Department has been called to a number of instances of dissatisfaction and criticism which have arisen within certain States due to alleged unfairness and unreasonableness of alteration requirements and of the financial burden imposed upon them under existing legislation and procedures. Consequently, the reasonableness and necessity of bridge alteration requirements to provide free and unobstructed navigation, such as requirements for horizontal and vertical clearances, and the determination as to who should bear the cost of such alterations, have given rise to serious questions of tremendous importance to State and local road officials. It therefore is believed that the matter of bridge alteration requirements in the interests of navigation, and the apportionment of the costs thereof, should be carefully explored by Congress so that the existing discrimination and difficulties may be removed in fairness to all interests concerned but without imposing upon the Federal Government any costs which it should not be required to bear.

To assure that the Federal Government would not be required to defray the cost of bridge alterations more than once, we recommend that the following language be added either as an amendment to section 6 of the Truman-Hobbs Act, or as an amendment to section 2 of H. R. 3764:

"Provided, That the part of the cost of alteration of any bridge which is used and operated for highway traffic, or for railroad traffic, or for both highway and railroad traffic, attributable to the requirements of traffic by highway or by railroad, respectively, shall be borne by the United States only once, and the part of the cost of alteration of any such bridge subsequently required, attributable to the requirements of traffic by highway or by railroad, respectively, shall be borne by the proprietor of the highway or by the proprietor of the railroad."

If the foregoing language is included, the Department would interpose no objection to the enactment of H. R. 3764, a view shared by the Bureau of the Budget.

If we can be of further assistance in this matter, please call upon us.

Sincerely yours,

CHARLES SAWYER,
Secretary of Commerce.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 16, 1952.

HON. CHARLES A. BUCKLEY,
*Chairman, Committee on Public Works,
House of Representatives.*

DEAR MR. BUCKLEY: Reference is made to your request to the Secretary of the Army for the views of the Department with respect to H. R. 3764, a bill to amend the act of June 21, 1940, relating to the alteration of certain bridges over navigable waters, so as to include highway bridges, and for other purposes. The Secretary of Defense has delegated to this Department the responsibility for expressing the views of the Department of Defense.

The Department of the Army has considered the above-mentioned bill, the purpose of which is to extend the provisions of the act of June 21, 1940, to any bridge used and operated for the purpose of carrying highway traffic if a State, county, municipality, or other political subdivision is the owner or joint owner thereof. Before discussing the merits of H. R. 3764, it is believed advisable to relate some of the history concerning the alteration of bridges unreasonably obstructing navigation.

The first general legislation on this subject was contained in sections 9 and 10 of an act of Congress approved August 11, 1888 (25 Stat. 424). That act authorized the Secretary of the Army to order the alteration of bridges unreasonably obstructing navigation. It was amended and reenacted by sections 4 and 5 of the act of September 19, 1890 (26 Stat. 453), and was superseded by section 18 of the act of March 3, 1899 (30 Stat. 1153).

In cases arising under these acts the bridge owners bore the cost of alterations. In 1907 the Supreme Court, in the case of *Union Bridge Company v. United States* (204 U. S. 364), held that such alterations did not amount to a taking of private property for a public use and therefore there was no obligation on the part of the United States to compensate the owner therefor.

After operating for 52 years on this basis Congress made its first general departure therefrom by passage, over a Presidential veto, of the act of June 21, 1940. That act provides for the alteration of lawful railroad bridges, or combined railroad and highway bridges, found to be unreasonable obstructions to the free navigation of any navigable waters of the United States, and for the apportionment of the cost of such alterations between the United States and the owners of such bridges.

Since passage of this act, 10 bridges have been ordered altered under its provisions. Final apportionment has been determined upon in six cases, the total cost to the Government having been approximately \$5,000,000. The proportionate share of the Government has varied between 61.5 and 90.3 percent, the average being 76.2 percent. It is estimated that the total cost to the Government of altering the other four bridges will be in the neighborhood of \$7,500,000.

Prior to the passage of the 1940 act, Congress had made a special departure from the 1888 policy in the act of August 16, 1937 (50 Stat. 648), which placed on the United States the expense of making alterations to the Hood River and Cascade locks highway bridges over the Columbia River to fit in with the newly created Bonneville pool.

Subsequent to 1940, Congress made another special departure from its early policy. The act of November 21, 1941 (55 Stat. 773), provides for compensating bridge owners for altering, reconstructing, relocating, replacing, or protecting highway and railroad bridges, trestles, and structures adversely affected by, or requiring alteration to meet the needs of navigation and flood control resulting from, the construction of dams under the provisions of the Tennessee Valley Authority Act.

Whether or not the departure from the policy obtaining prior to 1940 should be further extended, as provided for in H. R. 3764, is believed to be a matter for congressional determination. The Department of the Army, therefore, refrains from commenting thereon.

The fiscal effects of the bill cannot be estimated at this time, but it is believed that the cost to the Government of altering obstructive highway bridges owned by States, counties, municipalities, and other political subdivisions would be not less than the cost of altering railroad bridges under existing law. The percentage of highway bridges which are publicly owned has been increasing for many years.

This report has been coordinated among the departments and boards of the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by this bill are shown as follows (existing law in which no change is made is printed in roman; omitted matter is printed within black brackets; the new matter is printed in italics):

The term "bridge" means a lawful bridge over navigable waters of the United States, including approaches, fenders, and appurtenances thereto *which is used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, or if a State, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying highway traffic.*

The term "bridge owner" means any *State, county municipality, or other political subdivision, or any corporation, association, partnership, or individual owning, or jointly owning, any bridge, and when any bridge shall be in the possession or under the control of any trustee, receiver, trustee in bankruptcy, or lessee, such term shall include both the owner of the legal title and the person or the entity in possession or control of such bridge.*

At the time the Secretary shall authorize the bridge owner to proceed with the project, as provided in section 515 of this title, and after an opportunity to the bridge owner to be heard thereon, the Secretary shall determine and issue an order specifying the proportionate shares of the total cost of the project to be borne by the United States and by the bridge owner. Such apportionment shall be made on the following basis: The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs; and that part of the cost attributable to the requirements of traffic by railroad or highway, or both, including any expenditure for increased carrying capacity of the bridge, and including such proportion of the actual capital cost of the old bridge or of such part of the old bridge as may be altered or changed or rebuilt, as the used service life of the whole or a part, as the case may be, bears to the total estimated service life of the whole or such part: **[Provided That the part of the cost of alteration of any bridge for both highway and railroad traffic, attributable to the requirements of traffic, by highway shall be borne by the proprietor of the highway:]** *Provided further, That in the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition, precedent to the making of an order for such alteration or relocation. The United States shall bear the balance of the cost, including that part attributable to the necessities of navigation.*

If the owner of any bridge **[used for railroad traffic]** and the Secretary shall agree that in order to remove an obstruction to navigation, or for any other purpose, a relocation of such bridge or the construction of a new bridge upon a new location would be preferable to an alteration of the existing bridge, such relocation or new construction may be carried out at such new site and upon such terms as may be acceptable to the bridge owner and the Secretary, and the cost of such relocation or new construction, including also any expense of changes in and additions to rights-of-way, stations, tracks, spurs, sidings, switches, signals, and other railroad facilities and property, and relocation of shippers required for railroad connection with the bridge at the new site, shall be apportioned as between the bridge owner and the United States in the manner which is provided for in section 516 of this title in the case of an alteration and the share of the United States paid from the appropriation authorized in section 518 of this title: *Provided, That nothing in this section shall be construed as requiring the United States to pay any part of the expense of building any bridge across a navigable stream which the Secretary of War shall not find to be, in fact, a relocation of an existing bridge.*

OFFICE OF THE SECRETARY

In accordance with the provisions of the Act of March 3, 1879, (20 Stat. 419), the Secretary of the Interior is hereby authorized to make such regulations as may be necessary to carry out the purposes of the Act.

The following regulations are hereby promulgated:

Section 1. The Secretary of the Interior is hereby authorized to make such regulations as may be necessary to carry out the purposes of the Act.

Section 2. The Secretary of the Interior is hereby authorized to make such regulations as may be necessary to carry out the purposes of the Act.

Section 3. The Secretary of the Interior is hereby authorized to make such regulations as may be necessary to carry out the purposes of the Act.